

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA  
Plaintiff(s)/TRUSTEE

CASE No. 1:19-CR-00024-MRB  
JUDGE J. BARRETT/TRUSTEE

V.

DESSALINES SEALY  
Defendant(s)

**AFFIDAVIT OF RESPONSE TO GOVERNMENT'S OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS AND CLAIM OF PERSONAL  
JURISDICTION**

COMES NOW, Dessalines Sealy in Pro Per, acting as agent for the Falsely Accused, DESSALINES SEALY, ENS LEGIS, relying upon **HAINES V. KERNER, 404 US 519 (1972) and FERETTA V. CALIFORNIA, 422 US 806**, NONVOLUNTARY, INVOLUNTARY appear specially and not generally under threat, duress, and coercion for fear of great bodily harm and maybe not less than murder by officers of the court or agents, who hereby demands of this legislative tribunal and judicial assembly, respectfully moves this Court, and gives JUDICIAL COGNIZANCE OF AFFIDAVIT OF RESPONSE TO GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND CLAIM OF PERSONAL JURISDICTION, in reference to the indictment filed in the above captioned case:

1.The prosecutor's opposition to defendant's motion to dismiss, alleges accusations that claims raised challenging personal jurisdiction in this matter are meritless, defy common sense, frivolous and have no validity in American law which indicates that the prosecutor is either ignorant of the Law of the Land or his/her education in law was done without the United States of America as affiant has only quoted and referenced the Constitution, the Common Law aka The Law of the Land, Federal Statues which by law are mandated to be in harmony with the constitution for the republic United States of America, as well as Law of the Case.

**CONSTITUTION RULES OVER STATUTES**

"Since the constitution is intended for the observance of the judiciary as well as other departments of government and the judges are sworn to support its provisions, the courts are not 90 at liberty to overlook or disregard its commands or counteract evasions thereof, it is their duty in authorized proceedings to give full effect to the existing constitution and to obey all constitutional provisions irrespective of their opinion as to the wisdom or the desirability of such provisions and irrespective of the consequences, thus it is said that the courts should be in our alert to enforce the provisions of the United States Constitution and guard against their 95

infringement by legislative fiat or otherwise in accordance with these basic principles, the rule is fixed that the duty in the proper case to declare a law unconstitutional cannot be declined and must be performed in accordance with the delivered judgment of the tribunal before which the validity of the enactment it is directly drawn into question. If the Constitution prescribes one rule and the statute the another in a different rule, it is the duty of the courts to declare that the 100 Constitution and not the statute governs in cases before them for judgment.” **[16Am Jur 2d., Sec. 155:]**

#### **SUPREMACY CLAUSE**

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be 105 the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” **[US Constitution]**

“... Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by 110 that instrument.” after more than 200 years this decision still **stands**.

**[Marbury v. Madison 5 U.S. 137 (1803)]**

2. I Dessalines have appeared via special appearance for purpose of testing the sufficiency of service or the jurisdiction of the court waiving no defects and retaining all my inherent wrights and there is no evidence in the record to the contrary.

**[State v. Huller, 23 N. M. 306]**

3. I the man Dessalines am not a corporation, juristic person or fiction of any kind and has been falsely identified as such by the prosecutor.....see **Exhibits – B and C** affidavit of corporate denial and memorandum.

- When the Complaint is 'lodged by the Government for a fine, fee or a tax, all of 'which are revenue, they are imposed only on Corporations. See **Colonial Pipe Line Co. v. Triangle, 421 U.S. 100(1975)**. This Respondent must rebut the presumption that this Respondent is a Corporation named in the alleged Complaint.
- "(S)tatutes apply only to state created creatures known as corporations no matter whether (creatures of statute and offices of] state, local, or federal (government)." (**Colonial Pipeline Co. v. Traigle, 421 US 100. (1975)**).

4. The prosecutor has failed to provide valid contract on the record by which to compel performance of i Dessalines the man.

**[Clearfield Trust Co. v. United States, 318 U.S. 363-371 (1942.)**

**Note: The Clearfield Doctrine is stare decisis\*** upon all courts, and imposes that “an entity cannot compel performance upon its corporate statues or corporation rules unless it, like any other corporation, is the Holder in Due Course of some contract or commercial agreement

between it, and the one on whom its demands for performance are made, and is willing to produce said document, and to place the same into evidence before trying to enforce its demands.

5. The prosecutor has failed provide any evidence on the record of the abrogation of the right to due process of law of that justifies the exercise of authority over

**[Brady v. U.S., 397 U.S. 742 at 748 (1970.)]**

6. The prosecutor's mere allegation that he/she has subject-matter jurisdiction is only an allegation and there is no evidence in the record to the contrary.

**[ Lombard v. Elmore]**

7. The prosecutors allege Jurisdiction over the person" all the while service of process is defective and affiant appearance is not voluntary but by special appearance and there is no evidence in the record to the contrary.

**[Cooper v. Reynolds, 77 U.S. 308]**

8. Prosecutor unsworn statements of facts are not evidence and a trial court "cannot rely upon these unsworn statements of fact as the basis for the trial court's factual determinations and there is no evidence in the record to the contrary.

**[Trinsey v. Pagilaro, D.C.Pa]**

9. Prosecutor has failed to provide an injured party as required by law and there is no evidence in the record to the contrary.

**[Honomic v. State, 333 N.W. 2d 797]**

10. I Dessalines the man affirms an indictment or complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction and is "the jurisdictional instrument upon which the accused stands trial."

**[State v. Chamon, 671 P 2d]**

11. Prosecutor has failed to provide a valid indictment/complaint sworn and attested to under penalty of perjury as required by law and there is no evidence in the record to the contrary **see exhibit – A** Indictment.

**[Kennedy v. State, 86 Tex.Cr.R. 450]**

12. I Dessalines the man affirms the complaint is the foundation of the jurisdiction of the magistrate or court. Thus, if these charging instruments are invalid, there is a lack of subject matter jurisdiction and there is no evidence in the record to the contrary.

**[Penn v. Com.528 S.E. 2d]**

13. The prosecutor alleged indictment is neither sworn to or signed by a grand jury or grand jury foreman as required by law which causes the indictment to be defective, and therefore void and there is no evidence in the record to the contrary.

**[Defective Petition filed, Brown v. VanKeuren, 340 Ill.] [Void McGarry v. Village of Wilmette, 303 Ill]**

14. Prosecutor has failed to provide an indictment in harmony or in compliance with the Constitution for Republic united states of America as required by law and there is no evidence in the record to the contrary.

15. Prosecutor has consistently attempted to enforce their fraudulent indictment in violation of 5<sup>th</sup> Amendment and there is no evidence in the record to the contrary.

**Subject Matter** can never be presumed, never be waived, and cannot be construed even by mutual consent of the parties. Subject matter jurisdiction is two part: the statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness, in other words, sufficiency of pleadings. Subject matter jurisdictional failings.

16. Prosecutor has consistently violated his oath as well as breaching the public trust by depriving affiant of his rights guaranteed and protected by the Constitution for Republic united states of America and there is no evidence in the record to the contrary.

### **63C Am. Jur.2d, Public Officers and Employees**

63C Am.Jur.2d, Public Officers and Employees, §247\* "As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised on behalf of the government or of all citizens who may need the intervention of the officer.

[1] Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts.

[2] That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves.

[3] and owes a fiduciary duty to the public.

[4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.

[5] Furthermore, it has been stated that any enterprise undertaken by the public official who tends to weaken public confidence and undermine the sense of security for individual rights is against public policy. Fraud in its elementary common law sense of deceit-and this is one of the meanings that fraud bears [483 U.S. 372] in the statute.



See **United States v. Dial, 757 F.2d 163, 168** (7th Cir1985) the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, the judge, in reference to litigants who appear before him and he/she deliberately concealed material information from them, he was guilty of fraud. *McNally v United States* 483 U.S.350 (1987)

**1st Amendment**

Congress shall make no law respecting ... prohibiting ... the right of the people ...to petition the government for a redress of grievances.

**4th amendment:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**5th amendment:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**6th amendment:**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**7th amendment:**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

**9th amendment:**

The numeration in the Constitution, of rights, shall not be denied or disparage others retained by the people.

**10th amendment:**

The powers not delegated by the Constitution are reserved to the people.

**11th amendment:**

The Judicial power shall not extend to any lawsuit or equity, or Citizens or Subjects of any Foreign State.

17. Further there is no law that allows any Human (self-aware or not) to exercise authority over another Human (self-aware or not), and as I the sui juris man make the ultimate Presumption "I the sui juris man avows that I the sui juris man am a self-aware conscience human being and there is no evidence in the record to the contrary...see Exhibit – **D- Attainment of the age of Majority.**

- **SUI JURIS.** One who has all the rights to which a freeman is entitled; one who is not under the power of another, as a slave, a minor, and the like.

**18. AFFIANT AFFIRMS THAT STATEMENTS OF COUNSEL IN BRIEF OR IN ARGUMENT ARE NOT FACTS BEFORE THE COURT AND ARE THEREFORE INSUFFICIENT FOR A SUMMARY JUDGMENT."**

**[Trinsey v. Pagilaro, D.C.Pa. 1964, 229 F. Supp. 647.]**

- For instance, in **Brown v. School Bd. of Palm Beach County, 855 So. 2d 1267 (Fla. 4th DCA 2003)**, the trial court erred by relying on the unsworn statements of counsel in making its decision and thus, the appellate court reversed the trial court's decision and remanded for further proceedings.

19. Affiant affirms it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction.

**[Bindell v City of Harvey, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991)]**

**JURISDICTIONAL DEFECTS**

20. Affiant, affirms and assert that the Prosecutor has failed to provide evidence from the record of the case that the court has SUBJECT-MATTER JURISDICTION and the want of subject matter jurisdiction is a defect that cannot be cured and there is no evidence to the contrary.

- **DEFECT.** The want of something required by law. 2. It is a general rule that pleadings shall have these two requisites; 1. A matter sufficient in law. 2. That it be deduced and expressed according to the forms of law. The want of either of these is a defect.

- **DEFECTS** In matters of substance cannot be cured, because it does not appear that the plaintiff is entitled to recover; but when the defects are in matter of form, they are cured by a verdict in favor of the party who committed them. 3 Bouv. Inst. n. 3292; 2 Wash. 1; 1 Hen. & Munf. 153; 16 Pick. 128, 541; 1 Day, 315; 4 Conn. 190; 5 Conn. 416; 6 Conn. 176; 12 Conn. 455; 1 P. C. C. R. 76; 2 Green, 133; 4 Blackf. 107; 2 M'Lean, 35; Bac. Ab. Verdict, X.
- **Defective Petition filed**, Brown v. VanKeuren, 340 Ill. 118, 122 (1930)

21. The law requires PROOF OF JURISDICTION to appear on the record of the administrative agency and all administrative proceedings.

**["Hagans v. Lavine, 415 U.S. 533."]**

22. All courts of the United States are statutory courts, i.e., courts of limited jurisdiction. Due process of law is predicated on statutes of the United States that either compel or prohibit a given activity. The statutory authority is usually complex rather than simple, i.e., the need for all elements being on the table in order to establish subject matter jurisdiction.

- U.S. v. Clarke, 24 F.3d 257, 261 (D.C. Cir. 1994) (same); see also FED. R. CRIM. P. 12(b)(2) **(objections based on defects in indictment must be raised prior to trial); U.S. v. Harris, 959 F.2d**
- Stirone v. U.S., 361 U.S. 212, 217-19 (1960) (amendment of **indictment violates Fifth Amendment Grand Jury Clause**); U.S. v. Patino, 962 F.2d 263, 265-66 (2d Cir. 1992) (constructive amendment of indictment per se violation of Grand Jury Clause)

**23. The alleged Grand Jury is unconstitutional.**

**Federal Rule of Criminal Procedure Rule 6 (b) 1.**

**(b) Objection to the Grand Jury or to a Grand Juror.**

**(1) Challenges.**

**Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.**

**See Stirone v. United States**, 361 U.S. 212 (1960), which held that a variation between pleading and proof deprived petitioner of his right to be tried only upon charges presented in the indictment.

**Ex parte Bain, 121 U.S. 1, 12 (1887).** Ex parte Bain was overruled in United States v. Miller, 471 U.S. 130 (1985), to the extent that it held that a narrowing of an indictment is impermissible. Ex parte Bain was also overruled to the extent that it held that a defective indictment was not just substantive error, but that it deprived a court of subject-matter jurisdiction over a case. United States v. Cotton, 535 U.S. 625 (2002). While a defendant's failure to challenge an error of substantive law at trial level may result in waiver of such issue for purpose of appeal, challenges to subject-matter jurisdiction may be made at any time. Thus, where a defendant failed to assert his right to a non-defective grand jury indictment, appellate review of the matter would be limited to a "plain error" analysis. 535 U.S. at 631 (2002).30

United States v. Miller, 471 U.S. 130, 144 (1985). Breese v. United States, 226 U.S. 1 (1912). Costello v. United States, 350 U.S. 359 (1956); Lawn v. United States, 355 U.S. 339 (1958); United States v. Blue, 384 U.S. 251 (1966). Cf. Gelbard v. United States, 408 U.S. 41 (1972). Johnson v. Sayre, 158 U.S. 109, 114 (1895). See also Lee v. Madigan, 358 U.S. 228, 232–35, 241

**Dismissal is appropriate only** "if it is established that the violation substantially influenced the grand jury's decision to indict' or if there is 'grave doubt' that the decision to indict was free from substantial influence of such violations." Id. at 256, 108 S.Ct. at 2374, quoting United States v. Mechanik, 475 U.S. 66, 78, 106 S.Ct. 938, 946 (1986).

**24. Whenever a party denies that the court has subject-matter jurisdiction**, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction.) The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge has immediately lost subject-matter jurisdiction.

**[Bindell v City of Harvey, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991)]**

**[Loos v American Energy Savers, Inc., 168 Ill.App.3d 558, 522 N.E.2d 841(1988)]**

#### **DEMAND FOR DISMISSAL OF ACTION**

**25. Under the authority of the Administrative Procedure Act at 5 USC 556 'D', BURDEN OF PROOF, "the proponent of a rule or order bears the burden of proof."** The Supreme Court has stated that "If any tribunal (court) finds absence of proof of Jurisdiction over person and subject matter, **The Case Must Be Dismissed.**

**[Louisville RR v. Motley 2111 US 149, 29 S.Ct.42]**

In a long and venerable line of cases, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. See, e.g., Capron v. Van Noorden, 2 Cranch 126; Arizonans for Official English v. Arizona, 520 U.S. 43. Bell v. Hood, supra; National Railroad Passenger Corp. v. National Assn. of Railroad Passengers, 414 U.S. 453, 465, n. 13; Norton v. Mathews, 427 U.S. 524, 531; Secretary of Navy v. Avrech, 418 U.S. 676, 678 (per curiam); United States v. Augenblick, 393 U.S. 348; Philbrook v. Glodgett, 421 U.S. 707, 721; and Chandler v. Judicial Council of Tenth Circuit, 398 U.S. 74, 86—88, distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra vires act.

#### **SUMMARY OF THE LAW OF VOIDS**

**26. Before a court (judge) can proceed judicially, jurisdiction must be complete consisting of two opposing parties (not their attorneys - although attorneys can enter an appearance on behalf of a party, only the parties can testify and until the plaintiff testifies the court has no basis upon which to rule judicially), and the two halves of subject matter jurisdiction = the statutory or common law authority the action is brought under (the theory of indemnity) and**



the testimony of a competent fact witness regarding the injury (the cause of action). If there is a jurisdictional failing appearing on the face of the record, the matter is void, subject to vacation with damages, and can never be time barred.

**Authorities on Void Judgments:**

**[Wahl v. Round Valley Bank, 38 Ariz. 411, 300 P.955 (1931)]**

**[Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203 (1914)]**

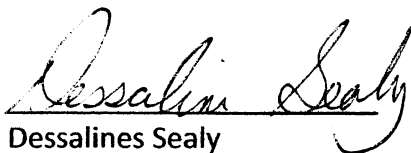
**[Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940)]**

27. **LET IT BE KNOWN TO ALL**, that I, Dessalines: Sealy, explicitly reserve all my Rights. See UCC 1-308, which was formerly UCC 1-207. I retain all my Rights. I always retain of all my Rights and liberties; and in all places, nunc pro tunc (now for then), from the time of my birth. Further, I retain my rights not to be compelled to perform under any contract or commercial agreement; I did not enter knowingly, voluntarily, and intentionally, "without dishonor."

IN WITNESS WHEREOF I verify under penalty of perjury that the foregoing is true and correct, under my hand and seal. Executed per Title 28 U.S.C. Section 1746(1) on June 12, 2019.

Sincerely,

Without Prejudice

A handwritten signature in cursive script, reading "Dessalines Sealy", written over a horizontal line.

Dessalines Sealy  
170 Vernon Ave.  
Brooklyn, NY 11206  
stardess@gmail.com  
718/569-7425

JURAT

State of Ohio }

ss. }

County of Hamilton

Sworn and subscribed (or affirmed) before me, a Notary Public, this 13th day of June in the year 2019, personally appeared the Petitioner, Dessalines Sealy, to be the individual(s) or living soul(s) whose name(s) is/are subscribed to the foregoing instrument.

Under oath this 13th day of June, A.D. 2019

[Signature]  
Notary Signature

My Notary Expires 09/13/2022



KIANA M. RIEMAN  
Notary Public, State of Ohio  
My Comm. Expires 09/13/2022